

**REMARKS**

This Response is submitted in response to the Final Office Action dated June 23, 2011.

Pursuant to Applicant's prior discussion with the Examiner, Applicant respectfully believes the amendments to the claims and specification place the present application in a form for allowance. Claims 1-4, 6-7, 10-14, 19-20 and 35-47 are pending in the application. Claims 5, 8-9, 15-18 and 21-34 have been cancelled. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

*Amendments to the Specification*

Applicant has amended the specification and respectfully submits no new matter has been added.

*Claim Rejections – 35 U.S.C. § 102*

Claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Wazne* (U.S. Pub. No. 2003/0158569). Applicant respectfully traverses.

Applicant has amended independent claim 1 to recite “a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.”

*Wazne* fails to disclose, teach or suggest, at least one limitation recited in claim 1, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.” *Wazne* discloses “a balloon or

envelope 3 whose outer shape has a kidney-bean profile which is symmetrical with respect to the horizontal axis of the flexible tube or catheter 7.” *See para. [0054].* The intragastric device 1 may be installed in a patient’s stomach through an endoscopy procedure in which the balloon is passed “through the mouth and then the esophagus 14 and [is positioned] in the stomach.” *See para. [0059].* The tube or catheter 7 may then be recovered “percutaneously by virtue of the securing means 9” and “fixed by an attachment system 15 to the skin of the patient’s belly in order to hold the intragastric device 1 in place.” *See paras. [0060], [0061].* However, *Wazne* does not disclose a stowed position of the tube or catheter 7, or an extended position of the tube or catheter 7 in which the tube or catheter 7 is withdrawn from a recessed region of a receiver. Accordingly, *Wazne* fails to disclose, teach or suggest at least one limitation recited in claim 1, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.”

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 102(b) be withdrawn. Claim 1 is novel, non-obvious and patentably distinguishable over *Wazne* and should be allowable.

Regarding dependent claim 4, it depends from and further limits independent claim 1, which is believed to be patentable, and thus this dependent claim should also be patentable over *Wazne*, for at least the reasons stated above in regard to claim 1.

Hence, Applicant respectfully requests the rejection of claims 1 and 4 under 35 U.S.C. § 102(b) be withdrawn.

***Claim Rejections – 35 U.S.C. § 103***

To establish a *prima facie* case of obviousness, certain criteria must be met. One such criterion requires the prior art reference or references, when combined, to teach or suggest all the claim limitations. With the above requirements in mind, Applicant presents the following arguments.

**Claims 2-3 and 10-13**

Claims 2-3 and 10-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Mouri* (U.S. Patent No. 6,074,378). Applicant respectfully traverses.

Regarding dependent claims 2-3 and 10-13, they each depend from and further limit independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Mouri* fails to remedy the deficiencies of *Wazne* discussed above, including *Wazne*'s failure to disclose, teach or suggest “a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.” *Mouri* is directed to a “self-retaining catheter.” *See col. 2, Ins. 12-13.* However, *Mouri* fails to disclose, teach or suggest a retractable tubing being movable between a stowed position in which the retractable tubing is housed in a recessed region of a receiver and an extended position in which the retractable tubing is withdrawn from the recessed region of the receiver and is extendable from a stomach of a patient to a mouth of the patient.

Further, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position. As discussed above in relation to claim 1, *Wazne* discloses its tube or catheter 7 may be recovered “percutaneously by

virtue of the securing means 9" and "fixed by an attachment system 15 to the skin of the patient's belly in order to hold the intragastric device 1 in place." *See paras. [0060], [0061]* (emphasis added). Further, in another embodiment, the tube or catheter 7 may be fixed to a "supply device of the implantable chamber type 5 which is positioned subcutaneously." *See para. [0068].* Thus, *Wazne* discloses the benefits of fixing a tube or catheter 7 either externally or subcutaneously on a patient, such that the tube or catheter does not retract back to its receiver. Accordingly, *Wazne teaches away* from a retractable tubing that is movable between a stowed position and an extended position, and would not be combined with *Mouri* to produce the invention claimed in dependent claims 2-3 and 10-13. *See, e.g., DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326 (Fed. Cir. 2009) ("An inference of nonobviousness is especially strong where the prior art's teachings undermine the very reason being proffered as to why a person of ordinary skill would have combined the known elements.")

Applicant therefore respectfully submits dependent claims 2-3 and 10-13 are novel, non-obvious, and patentable over *Wazne* in view of *Mouri*, and should be allowable.

Applicant respectfully requests the rejection of claims 2-3 and 10-13 under 35 U.S.C. § 103(a) be withdrawn.

**Claims 6-7, 14, 35-36 and 43-44**

Claims 6-7, 14, 35-36 and 43-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Gau* (U.S. Patent No. 5,084,061). Applicant respectfully traverses.

Regarding dependent claims 6-7 and 14, they each depend from and further limit independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Gau* fails to remedy the deficiencies of *Wazne* discussed above,

including *Wazne*'s failure to disclose, teach or suggest "a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient." *Gau* is directed to an "intragastric balloon having a self-sealing valve which is accessible to a filler tube." *See col. 2, Ins. 47-49.* However, *Gau* fails to disclose, teach or suggest a retractable tubing being movable between a stowed position in which the retractable tubing is housed in a recessed region of a receiver and an extended position in which the retractable tubing is withdrawn from the recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.

In addition, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be combined with *Gau* for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Applicant therefore respectfully submits dependent claims 6-7 and 14 are novel, non-obvious, and patentable over *Wazne* in view of *Gau*, and should be allowable.

Independent claim 35 has been amended to recite elements not disclosed, taught or suggested in *Wazne* or *Gau*, solely or in combination. In particular, Applicant has amended claim 35 to recite "a retractable tubing being movable between a stowed position in which said retractable tubing is housed by said molded valve patch of said receiver and an extended position in which said retractable tubing is withdrawn from said molded valve patch of said receiver and is extendable from a stomach of a patient to a mouth of the patient."

*Wazne* fails to disclose, teach or suggest, at least one limitation recited in claim 35, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed by said molded valve patch of said receiver and an extended position in which said retractable tubing is withdrawn from said molded valve patch of said receiver and is extendable from a stomach of a patient to a mouth of the patient.” *Wazne* does not disclose, teach or suggest use of a retractable tubing housed by a molded valve patch. *Wazne* accordingly fails to disclose, teach or suggest at least one limitation recited in claim 35, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed by said molded valve patch of said receiver and an extended position in which said retractable tubing is withdrawn from said molded valve patch of said receiver and is extendable from a stomach of a patient to a mouth of the patient.”

*Gau* fails to remedy the deficiencies of *Wazne*. *Gau* is directed to an “intragastric balloon having a self-sealing valve which is accessible to a filler tube.” *See col. 2, Ins. 47-49.* However, *Gau* does not use a retractable tubing that is movable between a stowed position and an extended position. *Gau*, similarly as *Wazne*, fails to disclose, teach or suggest at least one limitation recited in claim 35, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed by said molded valve patch of said receiver and an extended position in which said retractable tubing is withdrawn from said molded valve patch of said receiver and is extendable from a stomach of a patient to a mouth of the patient.”

In addition, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be

combined with *Gau* for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 35 under 35 U.S.C. § 103(a) be withdrawn. Claim 35 is novel, non-obvious, and patentably distinguishable over *Wazne* in view of *Gau* and should be allowable.

Regarding dependent claims 36 and 43-44, they each depend from and further limit independent claim 35, which is believed to be patentable, and thus these dependent claims should also be patentable over *Wazne* in view of *Gau*, for at least the reasons stated above in regard to claim 35.

Hence, Applicant respectfully requests the rejection of claims 6-7, 14, 35-36, and 43-44 under 35 U.S.C. § 103(a) be withdrawn.

#### **Claims 42 and 45**

Claims 42 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* and *Gau* as applied to claim 35 and further in view of *Duffy* (U.S. Pub. No. 2005/0171568). Applicant respectfully traverses.

Regarding dependent claims 42 and 45, they each depend from and further limit independent claim 35, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Duffy* fails to remedy the deficiencies of *Wazne* and *Gau* discussed above, including *Wazne* and *Gau*'s failure to disclose, teach or suggest, solely or in combination "a retractable tubing being movable between a stowed position in which said retractable tubing is housed by said molded valve patch of said receiver and an extended position in which said retractable tubing is withdrawn from said molded valve patch of said receiver and

is extendable from a stomach of a patient to a mouth of the patient.” *Duffy* is directed to an “assembly for guiding a catheter.” *See para. [0014].* However, *Duffy* does not disclose, teach or suggest a retractable tubing that is movable between a stowed position in which the retractable tubing is housed by a molded valve patch of a receiver and an extended position in which the retractable tubing is withdrawn from the molded valve patch of the receiver and is extendable from a stomach of a patient to a mouth of the patient.

In addition, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be combined with *Duffy* for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Applicant therefore respectfully submits dependent claims 42 and 45 are each novel, non-obvious, and patentable over *Wazne* and *Gau* as applied to claim 35, and further in view of *Duffy*, and should be allowable.

#### Claims 41, 46 and 47

Claims 41, 46 and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Cheng* (U.S. Patent No. 4,693,695). Applicant respectfully traverses.

Independent claim 41 has been amended to recite elements not disclosed, taught or suggested in *Wazne* or *Cheng*, solely or in combination. In particular, Applicant has amended claim 41 to recite “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said small diameter portion of said receiver and an extended position in which said retractable tubing is withdrawn from said small diameter portion

of said receiver and is extendable from a stomach of a patient to a mouth of the patient, said retractable tubing having one end coupled to said interface . . . .”

*Wazne* fails to disclose, teach or suggest, at least one limitation recited in claim 41, including “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said small diameter portion of said receiver and an extended position in which said retractable tubing is withdrawn from said small diameter portion of said receiver and is extendable from a stomach of a patient to a mouth of the patient, said retractable tubing having one end coupled to said interface . . . .” *Wazne* does not disclose, teach or suggest a stowed position of the tube or catheter 7, or an extended position of the tube or catheter 7 in which the tube or catheter 7 is withdrawn from a recessed region of a receiver. *Wazne* therefore fails to disclose, teach or suggest at least one limitation recited in claim 41, including “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said small diameter portion of said receiver and an extended position in which said retractable tubing is withdrawn from said small diameter portion of said receiver and is extendable from a stomach of a patient to a mouth of the patient, said retractable tubing having one end coupled to said interface . . . .”

*Cheng* fails to remedy the deficiencies of *Wazne*. *Cheng* is directed to a toy, including “an air-buoyant envelope 12, and a tether 14 operatively connected to the envelope.” *See col. 3, Ins. 35-38.* *Cheng* discloses the tether 14 may be a string or cord, or an elastic or elastomeric tether. *See col. 5, Ins. 56-60.* However, *Cheng* does not disclose, teach, or suggest that the tether is a retractable tubing. Accordingly, *Cheng* does not contemplate that the connection point

between *Cheng*'s tether 14 and envelope 12 comprises an interface for allowing fluid or air to pass through to or from the envelope 12. Rather, the "inlets or filling nozzles" 34, 36 of *Cheng* are positioned at the ends of *Cheng*'s sealing discs 38, 40, as shown in Figure 4.

The invention claimed in claim 41, however, positions an interface 18 at the small diameter portion of the gastric balloon shell. *See Fig. 3.* The interface 18 at this position allows one end of the retractable tubing 16 to couple to the interface 18 to add or remove fluid from the gastric balloon. The remaining portion of the tubing 16 wraps around the small diameter portion of the shell. *Cheng* fails to disclose, teach or suggest this structure.

As such, *Cheng*, similarly as *Wazne*, fails to disclose, teach or suggest at least one limitation recited in claim 41, including "an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said small diameter portion of said receiver and an extended position in which said retractable tubing is withdrawn from said small diameter portion of said receiver and is extendable from a stomach of a patient to a mouth of the patient, said retractable tubing having one end coupled to said interface . . . ."

In addition, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be combined with *Cheng* for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 41 under 35 U.S.C. § 103 be withdrawn. Claim 41 is novel, non-obvious and patentably distinguishable over *Wazne* in view of *Cheng* and should be allowable.

Regarding dependent claims 46 and 47, they depend from and further limit independent claim 41, which is believed to be patentable, and thus these dependent claims should also be patentable over *Wazne* in view of *Cheng*, for at least the reasons stated above in regard to claim 41.

**Claims 19 and 20**

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Adams* (U.S. Pub. No. 2002/0183765). Claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Trick* (U.S. Patent No. 4,417,567). Applicant respectfully traverses.

Regarding dependent claim 19, it depends from and further limits independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Adams* fails to remedy the deficiencies of *Wazne* discussed above, including *Wazne*'s failure to disclose, teach or suggest "a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient." Applicant therefore respectfully submits dependent claim 19 is novel, non-obvious, and patentable over *Wazne* in view of *Adams*, and should be allowable.

Regarding dependent claim 20, it depends from and further limits independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Trick* fails to remedy the deficiencies of *Wazne* discussed above, including *Wazne*'s failure to disclose, teach or suggest "a retractable tubing being movable between a stowed position in which said retractable tubing is housed in said recessed region of said receiver and an

extended position in which said retractable tubing is withdrawn from said recessed region of said receiver and is extendable from a stomach of a patient to a mouth of the patient.” Applicant therefore respectfully submits dependent claim 20 is novel, non-obvious, and patentable over *Wazne* in view of *Trick*, and should be allowable.

In addition, Applicant respectfully submits *Wazne teaches away* from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be combined with either *Adams* or *Trick*, for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Applicant respectfully requests the rejection of claims 19 and 20 under 35 U.S.C. § 103(a) be withdrawn.

**Claims 37-40**

Claims 37-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wazne* in view of *Duffy* (U.S. Pub. No. 2005/0171568). Applicant respectfully traverses.

Independent claim 37 has been amended to recite elements not disclosed, taught or suggested in *Wazne* or *Duffy*, solely or in combination. In particular, Applicant has amended claim 37 to recite “a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said torsionally loaded axle of said receiver and an extended position in which said retractable tubing is withdrawn from said torsionally loaded axle and is extendable from a stomach of a patient to a mouth of the patient.”

*Wazne* fails to disclose, teach or suggest, at least one limitation recited in claim 37, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said torsionally loaded axle of said receiver and an extended

position in which said retractable tubing is withdrawn from said torsionally loaded axle and is extendable from a stomach of a patient to a mouth of the patient.” *Wazne* does not disclose, teach or suggest use of a retractable tubing housed on a torsionally loaded axle of a receiver of a gastric balloon or the retractable tubing being withdrawn from said torsionally loaded axle. *Wazne* accordingly fails to disclose, teach or suggest at least one limitation recited in claim 37, including “a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said torsionally loaded axle of said receiver and an extended position in which said retractable tubing is withdrawn from said torsionally loaded axle and is extendable from a stomach of a patient to a mouth of the patient.”

*Duffy* fails to remedy the deficiencies of *Wazne*. *Duffy* is directed to an “assembly for guiding a catheter.” *See para. [0014]*. However, *Duffy* does not disclose, teach or suggest a retractable tubing being movable between a stowed position in which said retractable tubing is housed on said torsionally loaded axle of said receiver and an extended position in which said retractable tubing is withdrawn from said torsionally loaded axle and is extendable from a stomach of a patient to a mouth of the patient.

In addition, Applicant respectfully submits *Wazne* teaches away from a retractable tubing that is movable between a stowed position and an extended position, for at least the reasons discussed above in regard to claims 2-3 and 10-13. Applicant submits *Wazne* would not be combined with *Duffy* for similar reasons discussed above as to why *Wazne* would not be combined with *Mouri*.

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 37 under 35 U.S.C. § 103(a) be withdrawn. Claim 37 is novel,

non-obvious, and patentably distinguishable over *Wazne* in view of *Duffy* and should be allowable.

Regarding dependent claims 38-40, they depend from and further limit independent claim 37, which is believed to be patentable, and thus these dependent claims should also be patentable over *Wazne* in view of *Duffy*, for at least the reasons stated above in regard to claim 37.

Hence, Applicant respectfully requests the rejection of claims 37-40 under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

The application is deemed to be in condition for allowance and an expedited notice to this effect is respectfully requested.

If there are any questions with regards to this response, or if the Examiner believes that a telephone interview will help further prosecution of the application, the Examiner is invited to contact the undersigned at the listed telephone number.

Very truly yours,

**SNELL & WILMER L.L.P.**



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